



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/111,604	07/07/98	DIAB	M MASIMO.00703

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EXAMINER

WINAKUR, E

ART UNIT

PAPER NUMBER

3736

DATE MAILED:

05/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/111,604

Applicant(s)
Diab et al.

Examiner
Eric Winakur

Group Art Unit
3736



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 2 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 39 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☒ Claim(s) 39 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. This application is in condition for allowance except for the following formal matters:

Claim 39 is objected to because of the following informalities: the term "wavelength" (line 5) should read "wavelengths" and the term "said" should be inserted before "saturation" (line 14).

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

2. The following is a statement of reasons for the indication of allowable subject matter: Applicant cites numerous references regarding measurement of the saturation of a blood constituent which include processing to minimize the influence of motion induced noise on the measured value, but none of the prior art teaches or suggests a method that includes irradiating a subject with three wavelengths of light, sensing the intensity of the radiation which has passed through a portion of the subject at all three wavelengths, representing each signal as a function of the coefficients set forth in the claim, and solving the functions to obtain a value of the saturation.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Winakur whose telephone number is (703) 308 - 3940. The examiner can normally be reached on Monday - Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor, can be reached on (703) 308- 2701. The fax phone number for this group is (703) 308 - 0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 - 0858.

Eric F. Winakur
Art Unit 3736
May 5, 1999

